

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 41 of 2005**

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT THRO' DY. SERETARY HEALTH & FAMILY & 1 -
Applicant(s)

Versus

SMT. SARLABEN P. VANI - Opponent(s)

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Appearance :

Ms. Archana Raval AGP for Petitioner No(s).: 1,2.

MR ANSHIN H DESAI for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 10/08/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for

short), the petitioners seek to challenge the order dated 5.11.2004 recorded below application Ex.40 in Regular Execution Petition No.62 of 2001 by the learned 2nd Joint Civil Judge (SD), Junagadh by which the application filed by the respondent/original plaintiff came to be allowed and thereby the petitioners have been directed to pay the amount due and entitled to the respondent/plaintiff within three months from the date of the order. The order further stipulated that if the petitioners fail to follow the order and do not make the payment within three months, the order of attachment under Order 21 Rule 32 of the Code be issued on payment of process fees.

2. This Court has considered the submissions advanced by Ms. Archana Raval, learned AGP for the petitioners/judgment debtors and Mr. Anshin H. Desai, learned advocate for the respondent/judgment creditor.

3. It may be noted that this Court vide order dated 29.4.2005 directed the petitioners to produce calculations as per the decree and also to deposit the decretal amount before the executing court on or before 28.7.2005 and the same was deposited on 1.8.2005.

4. As per the settled legal position, the executing court cannot go behind the decree. In the case of Food Corporation of India v. S.N. Nagarkar, 2002 (2) SCC 475, the Supreme Court has held that "the Court cannot examine the correctness of the order sought to be executed after attaining finality." In the present case, the judgment and decree of the trial court dated 24.4.1990 was carried in appeal which also came to be disposed of as infructuous by order dated 31.1.2000 by the appellate Court. Thereafter execution application was preferred and after bi-partite hearing the impugned order was passed.

5. In view of the aforesaid state of affairs, according to this court, the judgment and decree of the trial court has attained finality way back on 3.11.2000.

6. It is submitted by Ms. Archana Raval, learned AGP for the petitioners that the petitioners have deposited an amount of Rs.8,94,300/- with the lower court which is not correct amount and the gross payable amount is Rs.8,73,044/-. She further states that there are other legal deductions which are to be made from the aforesaid amount which, according to her, is in the following break-up:

Professional Tax	:Rs. 2,955/-
House Rent Regular	:Rs. 27,400/-
Income tax	:Rs.2,61,913/-
Surcharge on Income tax	:Rs. 52,382/-
House rent at Market rate from August 1998 to Dec.	

2000

Regular Rent from June

1997 to July 1998 :Rs.1,14,160/-

Total legal deductions :Rs.4,58,810/-

Therefore, according to her, the net payable amount would be Rs.4,14,234/-

7. Mr. A.H. Desai, learned advocate for the respondent, has fairly conceded that the respondent/judgment creditor is entitled to receive Rs.4,14,234/- after deducting the legal deductions as mentioned in the breakup in foregoing paragraph. He further states that necessary directions may be issued to the trial court for permitting the respondent to withdraw Rs.4,14,234/- and appropriate directions may be given to the trial court to pay the same amount out of the total amount of Rs.8,94,300/- deposited by the petitioners in the trial court and rest of the amount may be paid back to the

petitioners.

8. In aforesaid view of the matter, this petition is disposed of with no order as to costs. The learned 2nd Joint Civil Judge (SD), Junagadh is thereby directed to pay Rs.4,14,234/- to the respondent out of the amount of Rs.8,94,300/- deposited by the petitioners in full and final settlement of the impugned judgment and decree which is passed in her favour whereas the remaining amount shall be refunded to the petitioners.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

10. It is clarified that Income Tax deductions will be subject to further scrutiny and if it is found to be deducted in excess the respondent will be entitled to refund from the Income tax department. It is further directed that the

petitioners will process the pension amount and other retiral benefits of the respondent preferably within a period of three months and the same will be paid to the respondent/judgment creditor preferably within three months thereafter.

(A.M. Kapadia, J.)

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